MT LEGISLATIVE HISTORY

Chapter 311 1971

Bill H _____ (S) 194 Original bill & hist. ___C

H. Committee on Public Health, Welfare & Safety S. Committee on State Administration

Hearing Date(s)	Feb 16	✓C	Hearing Date(s)	Feb 09	✓C
	Feb 23	✓C		Feb 10	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Feb 24	✓C		Feb 10	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

STATE ADMINISTRATION

February 9, 1971
11 a.m.

The meeting was called to order by Chairman James with a quorum present.

SENATE BILL 174:

Senator James provided background information which resulted in this proposed legislation. According to him, two years ago several doctors built the Western Montana Clinic building and put in it a pharmacy. They applied to the pharmacy board for licensing and were refused on the basis that it is unethical practice for doctors to own pharmacies, as related by the press. Senator James indicated this was taken to district court which upheld the decision of the board; but when this was carried to the supreme court, their conclusion reversed the district court decision and he quoted their wording, "There is no law in Montana against doctors owning a pharmacy, therefore, you must issue them a license."

Senator James decided there should be a law but recommended amendments to eliminate devices and had them prepared. He advised that on page 4, a new subsection 5 has been added to permit the dispensing of samples without restriction by doctors.

John McFarlin, secretary of the state board of pharmacy, testified that this is not a blanket inditement of the medical profession nor those who have authority to prescribe but rather an inditement of a condition which has become so prevalent in the ownership of pharmacies and drug companies. He quoted incidences from publications of abuses from such practices and his prepared statement is attached to these minutes.

Roderic Gudgel, executive secretary from the Montana State Pharmaceutical Association, stated they had already agreed to the amendments being submitted to amend the bill by omitting devices and his prepared statement is attached to these minutes. He anticipates this legislation to affect only future contracts and expects those contracts in existence now would continue to termination of their contracts. His interpretation would be that it merely prohibits the medical practitioners from having lessor interests.

Mr. Gudgel stressed that it could become a serious problem to an individual should he seek to make an investigation himself since he would be subjecting himself to considerable legal liability. He reminded that the board of examiners have this authority and want to be provided with evidence and facts before they proceed.

John W. McMahan, M.D. representing the Montana Medical Association, expressed that to most of them, the bill outlines that ownership of pharmacies by physicians is obviously in the best interests of the public and is what they want it to accomplish, but he fears we may be doing the public some harm as it is now written. He feels the implications can be applied too broadly.

Dr. McMahan directed attention to the statutes passed in the last session which makes it illegal for a physician to direct a patient or write a prescription for a specific place and wishes that in the event this is being abused would be reported to the board of examiners so they could take care of the situation.

Dr. McMahan interprets the section and subsections of 4a and 4b as being unlawful for doctors and that if you had leased ground this would prohibit him from profiting since many leases of buildings and public centers are leased on the basis of basic rent plus percentage of gross. He stated that if you want a bill which prohibits doctors from owning pharmacies, that is agreeable to him but he believes this bill as written claims all doctors to be dishonest. He thinks his own profession can take care of this itself if any person who has testimony that a doctor is guilty of sending patients to his own pharmacy for profit will report this to the board.

Senator James asked Dr. McMahan if he would be agreeable to an amendment which would permit leasing without a gross sales provision based, for instance, on bids or set price that would not be in violation of his principles and he was agreeable.

John Poston, registered lobbyist, representing the Montana Medical Association, testified that this bill does things which aren't usually done such as the treble damages part and also includes attorney fees which usually aren't. He alluded that section 5 gives the county attorney injunctive authority to stop this bad type of activity. He contested that it can be construed that if you buy a contract in a corporation on public market which owns a building with a pharmacy on it, then this would be o.k. but if it is a closed corporation, then he is indirectly benefiting from the sale of the drugs and on this basis, the bill is bad as it goes far beyond what the authors considered it to do.

Russ Hegland, representative of the Montana Medical Association, reiterated that it is unethical for physicians to own pharmacies and this is published in their bulletins periodically. He admitted there must be some violations just as there are always violations in all other things but maintained the vast majority are perfectly ethical.

Mr. Hegland argued that to get a law which specifically prohibits ownership of pharmacies by doctors is writing more into the measure than just limiting their ownership of pharmacies.

Senator James emphasized he wanted it distinctly understood that the authors are in no way casting suspicion or aspersions on the medical profession. He endeavored to point out that the code of ethics in Montana was in force when the doctors built and operated the pharmacy in Missoula but they did in fact do it.

The meeting adjourned.

James

Chairman James

February 10, 1971

There were three meetings held this day, one at 9 a.m., at 11 a.m. and 3 p.m. At all three hearings, there was a quorum present.

SENATE BILLS 187-188:

John C. Alley, State Board of Equalization presented his prepared statement which is attached to these minutes.

Mr. Howard Lord, chairman of the State Board of Equalization, specified the clearest place which indicates this legislation is impossible is the fact that assessments are never carried on a full cash value basis and the board could not sign any such affidavit.

Senator McKeon moved the bill DO NOT PASS, seconded and carried with Senator Mitchell voting no.

SENATE BILL 302:

Senator Bertsche had presented amendments to this bill and it was decided to further amend by adding another amendment; Senator McKeon moved the bill be amended, seconded by Senator Lyon and the motion carried. Senator McKeon moved the bill DO PASS, seconded by Senator Lyon and the motion carried.

SENATE BILL 312:

Senator Mackay moved the bill DO NOT PASS, Senator Nees seconded and the motion carried.

SENATE BILL 226:

It was moved and seconded to amend this bill; Senator Mackay moved the bill DO PASS AS AMENDED, Senator Lyon seconded and the motion carried.

SENATE BILL 174:

Senator Lyon moved the bill be amended, seconded by Senator Nees and the motion carried. Senator Lyon moved the bill DO PASS AS AMENDED, seconded by Senator Nees and the motion carried.

SENATE BILL 147:

Senator Bertsche described the intent and purposes of his bill.

Mrs. Bruce Anderson, League of Women Voters, believes that a personnel system which would bring some uniformity of salaries for the same work and the same ability is necessary both for budgeting and acquiring and maintaining personnel. Mr. Anderson interprets that this bill will provide a tentative way of approaching this with the classification

MONTANA STATE PHARMACEUTICAL ASSOCIATION

Senate Bill No. 174

Mr. Chairman and Members of the Committee:

My name is Roderic R. Gudgel. I am the executive secretary of the Montana State Pharmaceutical Association and appear representing that group.

We have agreed that Senate Bill No. 174 should be amended by omitting all references to devices except the Section 1 (c) definition, omitting the reference to glasses or lenses, and adding an item (5) to Section 3 which would clearly permit the dispensing of samples. The amendments which have been prepared to cover these modifications would essentially reduce the scope of Senate Bill No. 174 to prohibiting medical practitioners from (1) owning a pharmacy, and (2) dispensing drugs as a usual course of doing business.

Rod Gudgel

My name is John Mc Farlin. I am secretary of the Montana State Board of Pharmacy, and I am speaking for the Board of Pharmacy, unanimously.

I should like to preface my statement by saying that this is not a blanket indictment of the medical profession, nor those with the authority to prescribe. Rather, it is an idictment of a condition or a situation that has become so prevalent that it has received national recognition, and concern, and that condition is physician ownership of pharmacies and drug companies. Library research reveals more than 25 articles in the year 1968 publicizing the abuses from such a practise, in Life magazine, Look, Time, Newsweek, Goodhousekeeping (which devoted six pages) Readers Digest and others. Senator Hart, for example, has introduced a bill into Congress which would prohibit a doctor from profiting from the sale of a ny item he prescribes. Says Senator Hart, "You don't need a degree in psychology to understand the temptation to write an extra prescription - or six - per patient, when doing so will add thousandes of dollars to the doctor's annual income."

According to Good Housekeeping article a fast growing number of doctors are buying whole or part interest in drugstores. In Arkansas one third of all new pharmacy permits are being issued to such pharmac ies. Wisconsin has seen the number double in recent years. An official of the American Pharmaceutical Association states that at least 5000 to 7000 physicians hold pharmacy interests, ~~while many others enjoy indirect control thru titles in their wives or childrens names.~~ and Dr Frederick Wolff, director of Clinical Pharmacology Geo. W. U. Medical School testified that at least ½ of all medicines prescribed are unnecessary. Kefauver Senate Committee

Records made-public in California a few years ago showed that one physician who had written about $10,000 worth of prescriptions a year suddenly b egan writing $50,000 worth for about the same number of patients - the year he bought the drug store. More recently Louisiana investigators revealed that doctors who own drug stores tend to write twice as many prescriptionsper pa tient as physicians with no financial interest in the medicines they prescribe.. The Illinois Pharmaceutical Association has documented cases in which doctor owned drugstores av erage three times the customary profit on drugs.

May I also remind you of the Medicaid scandal which resulted from the investigation by the Senate Finance Committee digging into the Medicaid program, and which made headlines in May of 1969. In Baltimore, one of the situations cited, two pharmacists were involved, so we ha ve our "bad apples" too, but the pahrmacist doesn't hav e the authority to prescribe, nor originate the prescription. The investigation revealed that nine doctors, a dentist, two pharmacists, a nd an accountant topped Maryland's list of Medicaid payments with $245,497 for prescriptions last year. There are several other citations which I will leave with you.

One of the worst aspects of physitian ownership of pharmacies is the restraint of freedom of choice for the patient of where they wish to take their prescription to have it filled. The Texas Medical A ssociation, which has flatly condemned physician ownership of pharmacies, has declared "A physician who owns a pharmacy is going to tend to influence to an appreciable degree his patients use of his store." Hearings conducted last year

by Senator Hart's committee revealed a wide variety of methods by which these "medical merchants" made captive customers of their patients. Some state on their prescription blanks that the medicines are to be obtained from their pharmacies. Some pointedly disparage competing pharmacies. Others telephone the prescriptions to their pharmacies directly, or prescrib e in code that only their pharmacists can decipher.

Not long ago the House of Delegates of the Montana Medical Association resolved that the Montana Medical Association does, at this time, condemn physician owned clinic pharmacies as unethical, unwarranted, and detrimental to good medical and pharmaceutical service. ~~I cannot say if this is now in effect,~~ but it was as la te as 1969, and would seem to indicate that they were aware of the dangers to the people of Montana inherent in ~~such situation~~.

~~Let me conclude by stating that to my knowledge~~ In Montana this is not a prob lem in the extremes that I have stated but I'm sure you don't want the possibility for such conditions to come to our State. Now is the time to bar the door.

~~Accordingly, I urge~~ the committee ~~recommend that S.B. 174 do pass.~~

~~For the Board of Pharmacy~~

~~John M. Durkin~~

~~John M. Durkin, Secretary~~

☐ DO PASS
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 18 19 71

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill 174

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE TRADE IN DRUGS AND DEVICES BY PROHIBITING THE DISPENSING OF DRUGS OR DEVICES BY MEDICAL PRACTITIONERS AND THEIR PARTICIPATION IN PROFITS FROM THE DISPENSING OF SUCH PRODUCTS, EXCEPT UNDER CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES."

Respectfully report as follows: That Senate Bill 174

Be amended as follows:

Amend the title of the original bill, page 1, line 5, following the word "DRUGS" and before the word "BY" by omitting the words "AND DEVICES"

Further amend the title, page 1, lines 5 and 6, following the word "DRUGS" and before the word "BY" by omitting the words "OR DEVICES".

Further amend section 1, subsection (a), page 1, line 16, following the word "drugs" by omitting the words "or devices".

Further amend section 1, subsection (c), page 2, lines 1 and 2, following the word "man" on line 1, by omitting the punctuation and words ", but such term does not include glasses or lenses intended for the correction of vision".

Further amend section 1, subsection (d), page 2, line 5, following the word "drugs" and before the word "at" by omitting the words "or devices".

Further amend section 1, subsection (f), page 2, lines 10 through 20 by omitting the subsection in its entirety.

Further amend page 2, subsections (g) (h) and (i) by changing the lettering to read (f) (g) and (h) respectively.

Further amend section 3, page 3, line 24, following the word "drugs" by omitting the word "or devices".

Further amend section 3, subsection (2), page 3, line 27, following the word "drug" and before the word "in" by omitting the words "or device".

Further amend section 3, subsection (3), page 4, line 1, following the word "drug" and before the word "to" by omitting the words "or device".

Further amend section 3, subsection (3), page 4, line 3, following the word and punctuation "patient;" by omitting the word "or".

Further amend section 3, subsection (4), page 4, line 5, following the word "practitioner" by omitting the period "." and inserting in lieu thereof the punctuation and word "; or".

Further amend section 3, page 4, following line 5, by inserting a new subsection (5) to read as follows:

Senate Committee Report form
Revised 2-67

.....
Chairman.

3074

☒ DO PASS AS AMENDED
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 18 19 71

MR. PRESIDENT:

Senate Bill 174 (continued) page 2 of 2 pages

"(5) a medical practitioner from dispensing drug samples."

Further amend section 4, subsection (a), page 4, lines 7 and 8, following the word "indirectly" and before the letter "a" by omitting the following material ", a legal, beneficial, or lessor's interest in".

Further amend section 4, subsection (a), page 4, line 10, following the word "drug" and before the word "which" by omitting the words "or devices".

Further amend section 4, subsection (b), page 4, line 19, following the word "drugs" and before the word "to" by omitting the words "or devices".

Further amend section 6, subsection (a), page 5, line 5, following the word "recover" and before the word "the" by omitting the word "threefold".

AND AS AMENDED DO PASS

Senate Committee Report form
Revised 2-67

James
Chairman.

would be a public hearing to establish standards as to whether two trained people would have to be in the ambulance at once. Two trained people could be hard for the smaller communities. The training is easy to obtain as it is given free by the Red Cross.

SENATE BILL #174 -- Since people had come from out-of-town to appear on this bill time was allowed for the opponents to speak.

OPPONENTS:

Dr. John McMann, Helena, representing the Montana Medical Association, said he opposed greatly a physician owned pharmacy. It would involve a question of ethics. He said his group would like to review the bill and bring it back in two years. He wondered what would happen to the currently existing stores. We are almost trying to legislate ethics and morals, and he wondered if a doctor would send more patients to a relative's pharmacy?

Dr. Winkl Missoula Clinic, said this bill restricts a physician in many ar..s. He felt this was a very discriminatory act, and puts doctors in a poor situation being able to treat persons. Most physicians avoid prescribing if possible.

Russ Hegland, Executive Secretary for MMA, read a letter from the President which is filed herewith.

Jerry Loendorf, Attorney at Law, Helena, representing the MMA, said he was not sure what problems the bill was designed to solve. The bill is out of harmony with present business conditions. This bill really wouldn't prevent ..octor from owning a pharmacy as his wife could own the property. .e commented about Sections 3, 5 and 6 specifically.

Discussion followed. The witnesses were excu..d.

SENATE BILL #156 -- SPONSOR: Senator Low. explained his bill. This would not be a method of making money because people who have foster children only receive $63.50--$75.00 monthly. This is more a labor of love. No fiscal note was necessary because this is already included in the current welfare budget. This allotment is only for board and room, and there is no clothing allotment.

Discussion followed. The sponsor was excused.

SENATE BILL #113 -- SPONSOR: Since the Senator was unable to appear, Dr. Rogers, Warm Springs, spoke in behalf of the bill. He said over the last few years many patients have been referred to the hospital with drug related problems. The problems are compounded when relatives visit the patients (3/4 of the wards are open wards) and give them drugs. This bill would help solve the problem. Much discussion followed. It was suggested that the word "knowlingly" be inserted on line 13.

BITTERROOT CLINIC
RICHARD L. PETERSON, M. D.
DONALD W. MACLEAN, M. D.
CHARLES E. PETTY, M. D.
GORDON E. SARRIOCH, M. D.
PHYSICIANS AND SURGEONS
1334 W. MAIN
HAMILTON, MONTANA, 59840

December 16, 1970

L. R. Hegland, Executive Secretary
P. O. Box 1692
Billings, Montana 59103

Dear Russ:

I am in receipt of your letter of December 14th relative to the legislation proposed by the Pharmaceutical Association. Personally I feel this is a mischevious bit of legislation and not in the public interest. I don't believe the problems to which it is addressed are of any significant degree and it would require substantial money on the part of the state to enforce. I particularly object to Section 3 in spite of the items 1 to 4 which are supposedly sufficient to avoid any problems of being accused of dispensing. I see no reason why a physician should be permitted to dispense if there is not a pharmacy available and not if there is. This is pointless and seeking special privilege. I believe we should actively oppose the law for the reasons stated.

Sincerely yours,

Richard L. Peterson

Richard L. Peterson, M. D. President

RLP/mo

SENATE BILL #174 -- SPONSOR: Senator James explained the reason for his bill, and didn't feel it was punitive towards any physician in any way. This bill provides that doctors not get into the field of pharmacy. It would not affect any pharmacy now owned by a doctor.

PROPONENTS:

Senator John Lyon supported this bill and said he didn't think the medical practice should regulate business.

John McFarland, Board of Pharmacy, read a prepared statement which is filed herewith.

Rod Gudgel, Montana Pharmacy Association, read a prepared statement filed herewith. He presented a proposed amendment to the bill.

Senator James said Dr. Buecker from Chester was unable to attend but supported this bill.

OPPONENTS:

Jerry Loendorf, representing the Montana Medical Association, said he didn't feel there was a need for this bill. He questioned whether the bill could solve the problems to which it was addressed. He referred to a Supreme Court dealing with this situation. Under the present Unfair Practices Act, which he read in full from the codes, he thought this situation was well taken care of. He thought the proposed bill would set up a monopoly for pharmacists. He said there was still a way to get around this by having one's wife or relative own the pharmacy.

Russ Hegland, Montana Medical Association Executive Secretary, also opposed the bill.

Dr. Mickler, Missoula, said he greatly opposed the bill because there is a question of ethics involved in this. He didn't feel that any legislator should deny a doctor from entering a business. This would take away all competition, and intimidates physicians. This would deny fair practice and competition which are part of our basic democratic freedoms.

Senator James closed by saying that he felt the bill was a good one, and everyone could live with it. This would keep Montana from falling into many of the pitfalls which has happened in eastern states.

Much discussion followed. The witnesses were excused.

Fagg moved that SENATE BILL #209 BE AMENDED on page 3, line 15 and line 16 that the stricken material be reinserted. Motion was seconded and passed. Fagg moved that SENATE BILL #209 BE CONCURRED IN AS AMENDED. Motion seconded and carried.

There was much discussion on SENATE BILL #174, and everyone agreed that the intent was good but the bill wasn't written correctly. Asbjornson moved that SENATE BILL #174 BE NOT CONCURRED IN. Zody made a substitute motion that the bill BE AMENDED to include the pharmacy association amendments. Motion seconded and carried. Yardley moved that the present Section 6 (a) and (b) be stricken in its entirety. Motion seconded and carried. Lee moved that SENATE BILL #174 BE CONCURRED IN AS AMENDED. Motion seconded and carried.

The meeting was adjourned at 8 p.m.

MILLETT P. KELLER, CHAIRMAN

JUDY PRATT, SECRETARY

Montana State Board of Pharmacy

STAPLETON BUILDING P. O. BOX 2004
BILLINGS, MONTANA

My name is John McFarlin. I am speaking for the Board of Pharmacy, unanimously, as secretary of that agency.

I should like to preface my statement by saying that this is not a blanket indictment of the medical profession, nor those with the authority to prescribe. Rather, it is an indictment of a condition, or a situation, that has become so prevalent in other areas of these United States that it has received national recognition and concern, and that condition is physician ownership of pharmacies and drug companies. Library research reveals more than 25 articles in the year 1968 publicising the abuses from such practise in Life magazine, Look, Time, Newsweek, Good Housekeeping (which devoted more than six pages). Readers Digest, and others. Senator Hart, for example, has introduced a bill into Congress which would prohibit a doctor from profiting from the sale of any item which he prescribes. Says Senator Hart, "You don't need a degree in psychology to understand the temptation to write an extra prescription - or six - per patient, when doing so will add thousands of dollars to to the doctor's annual income."

Accoring to the Good Housekeeping article a fast growing number of doctors are buying whole or part interest in drug stores. In Arkansas one-third of all new pharmacy permits are being issued to such pharmacies. Wisconsin has seen the number double in recent years. An official of the American Pharmaceutical Association

states that at least 5000 to 7000 physicians hold pharmacy interests, while many others enjoy indirect control thru titles their wives or childrens names.

Records made public in California a few years ago showed that one physician who had written about $10,000 worth of prescriptions per year sudienly began writing about $50,000 worth for the same approximate number of patients - the year he acquired ownership of the drug store. More recently Louisian investigators revealed that doctors who own drug stores tend to write twice as many prescriptions per patient as physicians with no financial interest in the medicines which they prescribe. The Illinois Pharmaceutical Association has documentedcases in which doctor owned drugstores average three times the customary profit on drugs on prescription.

May I also remind you of the Medicaid scandal which resulted from the investigation by the Senate Finance Committee digging into the Medicaid program, and which made headlines in May of 1969. In Baltimore, one of the situations cited, two pharmacists were involved, so we have our "bad apples" too, but the pharmacist doesn't have the authority to prescribe, nor originate the prescription. The investigation revealed that nine physicians, a dentist, two pharmacists, and an accountant topped Marylund's list of Medicaid payments with $245, 497 for prescriptions last year. There are several other citations of this exploitation which I will leave with you.

One of the worst aspects of physician ownership of pharmacies is the restraint of freedom of choice for the patient of where they wish to take their prescription to have it filled. The Texas Medical Association, which has flatly condemned physician ownership of pharmacies has declared, "A

physician who owns a pharmacy is going to tend to influence to an appreciable degree his patients use of his store." Hearings conducted last year by Senator Hart's committee revealed a wide variety of methods by which these "medical merchants" made captive customers of their patients. Some stated on their prescription blanks that the medicines were to be obtained from their pharmacies. Some pointedly disparage competing pharmacies. Others telephone their prescriptions to their pharmacies directly, or prescribe in code that only their pharmacists can decipher.

In the 1950's the House of Delegates of the Montana Medical Association resolved that the Montana Medical Association does, at this time, condemn physician owned clinic pharmacies as unethical, unwarranted, and detrimental to good medical and pharmaceutical service. It has been confirmed that this resolution is still in effect, and would seem to indicate that the Montana Medical Association was aware of the dangers to the people of Montana inherent in such a situation.

Let me conclude by stating that to my knowledge in Montana this is not a problem existing in the extremes that I have enumerated, but I'm sure you do not want the possibility for such conditions to come to our State. Now is the time to bar the door, and preclude that possibility. Accordingly, I urge the committee recommend that S.B. 174 do pass.

For the Board of Pharmacy

John Mc Farlin

John Mc Farlin,
Secretary

MONTANA STATE PHARMACEUTICAL ASSOCIATION

Senate Bill No. 174

Mr. Chairman and Members of the Committee:

I am Roderic Gudgel and appear here representing the Montana State Pharmaceutical Association (MSPA).

The MSPA asks your favorable consideration of S.B. 174 to close the door on abuses which we feel will continue to arise unless it is enacted.

Our analysis of S. B. 174 follows:

Section 1 - The significant definitions are (a) "medical practitioner" (i.e., physician, dentist, osteopath, and podiatrist), (e) "community pharmacy" meaning any pharmacy within 10 miles of a practitioner's office.
Section 2 - Prohibits practitioner ownership of any company engaged in the manufacture, processing, packing or distribution of drugs, but permits an ownership interest if such interest has also been publicly offered to the general public.
Section 3 - Prohibits a practitioner from dispensing drugs as a normal course of doing business, but provides for reasonable exceptions.
Section 4 - (a) Prohibits a practitioner from owning any pharmacy within 10 miles of his office, and (b) prohibits a pharmacy (pharmacist) within 10 miles of such office from paying any valuable consideration to a practitioner based upon income from the sale of drugs to such practitioner's patients.

It has never been our intention that the provisions of S.B. 174 should be retroactively applied to practitioner owned pharmacies which already exist. Therefore, we now propose that S.B. 174 be amended to clearly provide for this exclusion by adding a new section to read as follows:

"Section 6. The provisions of subsection (a) of section 4 shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption."

Rod Gudgel

☐ DO PASS
☐ DO NOT PASS
☒ BE CONCURRED IN AS AMENDED
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 24, 19 71

MR. SPEAKER:

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration Senate Bill No. 174

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE TRADE IN DRUGS BY PROHIBITING THE DISPENSING OF DRUGS BY MEDICAL PRACTITIONERS AND THEIR PARTICIPATION IN PROFITS FROM THE DISPENSING OF SUCH PRODUCTS, EXCEPT UNDER CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES."

Respectfully report as follows: That Senate Bill No. 174

Be amended on page 4, line 24, Section 6, by striking all of section 6 (a) in its entirety, through line 30.

And be further amended on page 5, Section 6 (b), lines 1 through 3 by striking the material therein in its entirety.

And be further amended on page 4, line 24, by adding a new section as follows: "Section 6. The provisions of subsection (a) of section 4 shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption."

BE CONCURRED IN AS AMENDED
DO PASS

House Committee Report Form

M. F. Keller
Chairman

directs or recommends corrective measures and may specify a definite date or time in which to abate said violation (s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the board, or any other determination or decision made by the board.

"Occupational health."

"Order."

Repealing clause.

Section 6. Sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116 and 50-117 are hereby repealed.

Approved March 15, 1971.

CHAPTER NO. 311.

An Act to Regulate Trade in Drugs by Prohibiting the Dispensing of Drugs by Medical Practitioners and their Participation in Profits from the Dispensing of Such Products, Except Under Certain Circumstances, and for Other Purposes.

Be it enacted by the Legislative Assembly of the State of Montana:

Definitions.

Section 1. As used in this act:

"Medical practitioner."

(a) The term "medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), and in such practice to administer or prescribe drugs.

"Drug."

(b) The term "drug" means any article:

(1) Recognized in the official United States pharmacopeia, the official national formulary, or in any supplement to such pharamcopeia or formulary.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(3) Intended to affect the structure or any function of the body of man.

(4) Intended for use as a component of any article described in clause (1), (2) or (3) of this paragraph, but such term does not include any device or any components of a device.

"Device." (c) The term "device" means any instrument, apparatus, or contrivance intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(2) To affect the structure or any function of the body of man.

"Pharmacy." (d) The term "pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

"Community pharmacy." (e) The term "community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within ten (10) miles of any place at which such medical practitioner maintains an office for professional practice.

"Drug company." (f) The term "drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs, but such term does not include a pharmacy.

"Person." (g) The term "person" means any individual, and any partnership, firm, corporation, association, or other business entity.

"State." (h) The term "state" means the state of Montana or any political subdivision thereof.

Section 2. It shall be unlawful:

Drug company prohibited from selling interest to medical practitioner. (a) For a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

Medical practitioner prohibited from owning interest in drug company. (b) For a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment, and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment.

Rebates from drug company prohibited.

(c) For a medical practitioner to solicit or to knowingly receive from a drug company, or for a drug company to pay or to promise to pay to a medical practitioner, any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales at any place of drugs manufactured, processed, packaged, or distributed by the company.

Dispensing of drugs prohibited.

Section 3. Except as otherwise provided by this section, it shall be unlawful for a medical practitioner to engage directly or indirectly in the dispensing of drugs.

Exceptions.

Nothing in this subsection shall prohibit:

(1) A medical practitioner from furnishing a patient any drug in an emergency.

(2) The administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner.

(3) Dispensing a drug to a patient by a medical practitioner where there is no community pharmacy available to the patient.

(4) The dispensing occasionally, but not as a usual course of doing business by a medical practitioner.

(5) A medical practitioner from dispensing drug samples.

Ownership of community pharmacy prohibited.

Section 4. (a) It shall be unlawful for a medical practitioner to own directly or indirectly a community pharmacy. Nothing this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under stction 3.

Rebates from community pharmacy prohibited.

(b) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy, or for a community pharmacy knowingly to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

Duties of county attorney—proceedings.

Section 5. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to

prevent and restrain such violations. Such proceeding may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as may be possible to the hearing and determination of the action.

Exemptions.

Section 6. The provisions of subsection (a) of section 4 shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

Approved March 15, 1971.

CHAPTER NO. 312.

An Act to Amend Section 84-301, R.C.M., 1947, to Include Trailers Affixed to Land, Mobile Homes, Clarification of Eligibility and Increasing Maximum Retirement Benefits Eligible for Classification of Property, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 84-301, R.C.M., 1947, is amended to read as follows:

Classifications of taxable property.

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Mines and claims.

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Determination of value.